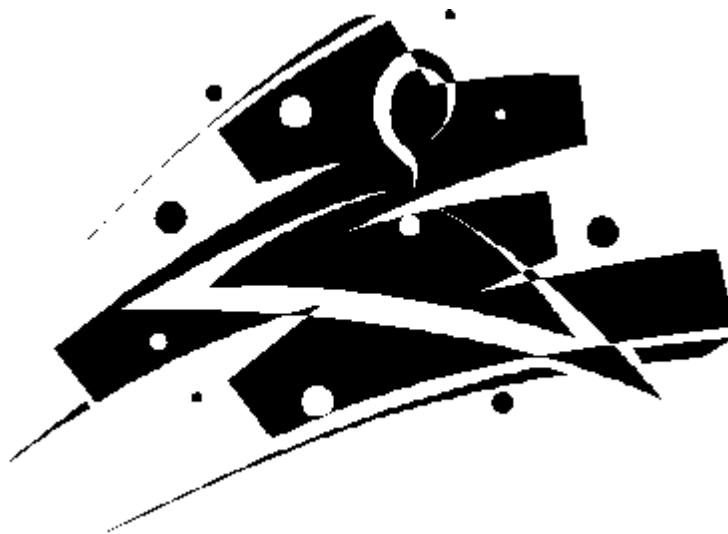


DCERP

DRYCLEANER ENVIRONMENTAL RESPONSE
PROGRAM

GUIDANCE DOCUMENT



TENNESSEE DEPT. OF ENVIRONMENT AND CONSERVATION
DIVISION OF SUPERFUND

ISSUE DATE: SEPTEMBER 8, 1997
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DISCLAIMER

This Guidance Document is designed as a broad, general overview of the Drycleaner Environmental Response Program (DCERP). It is not intended as a comprehensive interpretation of the Act or the Rule. Additional information not found in this document may be needed to answer specific administrative or technical questions related to the DCERP.

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DCERP GUIDANCE DOCUMENT

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PURPOSE OF THIS GUIDANCE DOCUMENT

The purpose of this Guidance Document is to provide useful information to Potentially Eligible Parties, contractors, and others who may have an interest in how the Drycleaner Environmental Response Program (DCERP) will operate. This Guidance Document has been developed within the framework provided by the program statute and regulations and contains various requirements necessary for the proper administration of the program. As this document is intended as guidance only, it does not have the force and effect of law. Any apparent conflicts between this document and the DCERP statute and regulations will be resolved in favor of the statute and regulations. For this reason, anyone who utilizes this document for guidance is encouraged to consult the DCERP statute and regulations in conjunction with this document.

Guidance material has been organized in accordance with the sections of the program regulations, Rule 1200-1-17 et seq. ("the Rule"). For ease of reference, current versions of the regulations and statute appear in Appendices B and C, respectively. Forms and other information are also included here. This document will be periodically reviewed by the Department and updated as needed. Please contact the DCERP staff to confirm the most current document issue date.

POINTS OF CONTACT WITHIN DCERP

The mailing address for the DCERP is as follows:

Tennessee Department of Environment and Conservation
Division of Superfund - DCERP
401 Church Street, 4th floor L & C Annex
Nashville, TN 37243-1538

The general telephone number for the Division of Superfund is: (615) 532-0900

The fax transmission number for the DCERP is: (615) 741-1115

The DCERP Website address is: www.state.tn.us/environment/dsf/dcerp.htm

The following are dial-direct numbers for DCERP staff. These persons are available to assist you with program matters:

Steve Goins, DCERP Program Manager
(615) 532-8599
sgoin@mail.state.tn.us

Kay Dunn, Administrative Services Assistant
(615) 741-2281
kdunn2@mail.stste.tn.us

James D. Gilbert, Environmental Specialist
(615) 741-4936
jgilbert@mail.state.tn.us

BACKGROUND INFORMATION

TCA 68-217-101 et. seq. Drycleaner's Environmental Response Act ("the Act")

On June 13, 1995 the Tennessee General Assembly enacted this law which established the Drycleaner Environmental Response Program (DCERP). As created by the Drycleaner's Environmental Response Act, the DCERP is designed to facilitate and provide funds for the investigation and remediation of releases from eligible drycleaning facilities and in-state wholesale distribution facilities.

Rule 1200-1-17-et seq. program regulations - "the Rule"

Following public hearings on the draft regulations in November 1996 and completion of the public comment process in January 1997 the Drycleaner Environmental Response Board voted on February 10, 1997 to promulgate regulations for this program. These regulations, Rule 1200-1-17 et seq., were then forwarded to the Office of the Attorney General of the State of Tennessee for review. The rules were filed on August 1, 1997 and became effective on October 15, 1997. Amendments were filed on March 18, 1999 and became effective on June 1, 1999

Roles of the Participants

Potentially Eligible Parties may initiate fund-eligible investigative and remedial response activities by submitting an Application for Entry into the DCERP. The process by which eligibility is determined is described in Section .05 of the Rule. Deductible amounts will apply to a portion of costs incurred and vary with facility type and size. The schedule of deductibles is described in Section .08 of the Rule and also appears in Section .08 of this Guidance Document.

The investigative and remedial work is conducted by qualified contractors. An Eligible Party will make selection(s) from a list of qualified contractors to conduct DCERP-funded work. Contractors may qualify to conduct work under any or all of the following (4) categories - Facility Inspection, Investigative Work, Remediation Oversight, and Remediation Work. Requirements for qualifying under each category are described in Section .09 of the Rule.

Approval of project work plans and cost proposals will be the responsibility of the DCERP staff. The DCERP staff also is responsible for facility registrations, issuance of certificates, collection and tracking of fees (revenues) and expenses, managing the contractor qualification process, and other program functions.

DCERP Board Oversight

The DCERP aims to maximize the use of limited fund monies at all phases of work within this program. Toward this end, this program features pre-approval of all work plans and cost proposals as well as prioritization of sites. The DCERP staff reports on program operations and financial status to the Drycleaner Environmental Response Board ("the Board").

Board meetings are held in Nashville in the 17th floor conference room of the L & C Tower, 401 Church Street. These meetings are open to the public. A tentative schedule for Board meetings is available in late December for the upcoming calendar year. To confirm the exact dates and times of meetings or to obtain other information on Board meetings, please contact the DCERP Program Manager.

LIST OF ACRONYMS USED IN THIS PROGRAM

GENERAL TERMS

BMP	Best Management Practices
DCAC	Drycleaner Approved Contractor
DCERP	Drycleaner Environmental Response Program
FTE	Full Time Equivalent (with reference to employees)
PEP	Potentially Eligible Party

CHEMICAL COMPOUNDS

CFC	Chlorofluorocarbon
DNAPL	Dense Non-Aqueous Phase Liquid
HCFC	Hydrochlorofluorocarbon
LNAPL	Light Non-Aqueous Phase Liquid
PCE	Perchloroethylene, also known as “perc” or tetrachloroethylene
VOC	Volatile Organic Compound

PHASES OF WORK IN THE PROGRAM

FI	Facility Inspection
PI	Prioritization Investigation
SIA	Solvent Impact Assessment
SI	Supplemental Investigation
RAS	Remedial Alternatives Study

ABBREVIATIONS COMMONLY USED IN THIS PROGRAM

Act	Drycleaner's Environmental Response Act, TCA 68-217-101 et seq.
Department	Department of Environment and Conservation, State of Tennessee
Rule	Rule 1200-1-17 et seq., Drycleaner Environmental Response Program regulations
Commissioner	Commissioner of the Department of Environment and Conservation
Board	Drycleaner Environmental Response Board

.02 DEFINITIONS

The Rule contains all of the term definitions listed in the Act as well as some additional defined terms. A copy of the Rule can be found in the Appendices section in the back of this document.

.03 REGISTRATION, FEES AND SURCHARGES, CERTIFICATE ISSUANCE

Annual Registration Fees

Drycleaning facilities and certain in-state drycleaning solvent suppliers¹ that operate in the State of Tennessee are required to annually register their sites with the DCERP. Abandoned facilities may register their sites as noted below. Certain types of facilities are excluded from the annual registration requirement². The requirement to register went into effect as of January 31, 1996.

With the exception of out-of-state suppliers, all facilities who register their sites are required to pay an annual registration fee. Registration fees are due on January 31st of each year and are based upon the facility type and size³. These fees are *per site fees*, so a facility that changes locations during a calendar year must pay a new registration fee for their new location. For a facility which begins operations after January 31st of any year, a registration form and payment must be submitted within 30 days of commencing operations. For a facility which ceases operations during a calendar year, no refund of the registration fee, or any portion thereof, will be permitted.

Certain changes concerning a registered facility necessitate the filing of a revised registration form. These include a change in ownership, operation, or management of the facility or real property, or a change in the facility name or physical location. A revised registration form should be submitted if the facility ceases operations for ninety days or more or goes out of business after having registered the location. A revised form is to be submitted within 30 days of these types of changes. A new registration fee is generally not required when submitting a revised registration form. However, as noted above, a change in physical location triggers a new registration fee since registrations are based on particular site locations.

Registration payments that are received by the DCERP after January 31st, or more than 30 days after commencing operations for a new facility which begins operations after January 31st, are considered late and a penalty will be applied. Late penalties are partially based upon the length of time that the registration fee has been unpaid.⁴

1 *In accordance with TCA 68-217-102 (13), if an in-state wholesale solvent distribution company's gross receipts from the sale of drycleaning solvents and supplies to drycleaning facilities equals or exceeds 20%, that company (facility) is required to register with the program.*

2 *In accordance with TCA 68-217-102(6), the following facilities are not required to register: coin-operated drycleaning operations, drycleaning operations located on a U.S. military base or owned by the United States, the state, or any state agency, and commercial uniform services or linen supply facilities. **These facilities are also not eligible to participate in the DCERP.***

3 *The registration fees are set out at TCA 68-217-106(c) and (e) and at Rule .03(3)(c) and (d).*

4 *In accordance with TCA 68-217-108(b), a penalty of up to \$50 per day may be assessed for late registration fees or late solvent surcharge fees (See Appendix D).*

Abandoned Facilities

The Act and Rule define an abandoned facility as “any real property premises or individual leasehold space on which a drycleaning facility formerly operated.” Current or prior owners or operators of such facilities may register their sites.

There is no obligation to annually register or to maintain a registration on an abandoned facility. However, if an abandoned facility does not register on the first possible date that it could register under the Act, or if it does not keep its registration current after it has first registered, then the registrant must pay all registration fees for prior years, interest thereon, plus a \$50 per month late penalty.

The DCERP will classify sites as active or abandoned on a calendar year basis in accordance with the registration due date. Thus, a facility which has registered as an active facility but then goes out of business during the calendar year will still be considered an active facility, with all relevant BMPs and requirements, until the end of the calendar year. At the start of the next calendar year, the facility will then be considered an abandoned facility for purposes of the DCERP.

Registration Forms

DCERP will attempt to contact all known facilities by sending out registration packets at least 30 days before the registration form and fee are due. However, a failure to receive such a registration packet does not relieve the facility of its statutory duty to timely register their site.

Registration forms should be filled out as completely and accurately as possible. On any registration form submitted after the effective date of the Rule, any material misrepresentation or omission on the form may be considered willful noncompliance with the Rule and may serve as sufficient basis for any or all of the following:

- (1) denial of an application for entry into the program;
- (2) revocation or non-renewal of a registration; or
- (3) withdrawal of a grant for entry into the program.

Registration Certificates

The DCERP issues registration certificates annually to the person who submits the registration form and has paid the annual registration fee. The certificate shows the following information:

- (1) the effective date of the certificate;
- (2) the facility's identification number as assigned by the DCERP;
- (3) the business name indicated on the registration form; and
- (4) the street address of the facility.

Most importantly, the certificate is to be *conspicuously posted* at the facility as evidence of the registration status of the facility. In order to purchase solvent a facility must have a valid registration certificate. To facilitate verification by the solvent suppliers, the DCERP suggests that drycleaning facilities post their registration certificates near their drycleaning machines.

Registration Certificates (continued)

Certificates are issued for a specific physical location and are thus non-transferable to different locations. A facility which moves will therefore no longer have a valid certificate of registration. For example, if a drycleaning facility relocates across the street or even next door to its old location, it must reregister with the DCERP under the new address and receive a new certificate. The old certificate is no longer valid, since the physical address of the operation has changed.

Registration deadlines and certificate effective dates are independent of each other. In accordance with 1200-1-17-.03(4)(c), a registration certificate is effective for one year, starting on May 1 of the current year to April 30 of the following year, unless otherwise terminated under the Rule.

Certificate Revocation

By a Commissioner's Order the Department may revoke a facility's certificate or withhold re-issuance for any violations of the Act or the Rule that significantly cause or contribute to a release, or a failure to contain a release. The Order will state its effective date, the grounds for revocation, and the rights of appeal. The facility will be required to surrender its certificate of registration and the DCERP may attempt to notify solvent suppliers of the revocation or non-renewal. A facility whose certificate has been revoked or not renewed may reapply for registration in accordance with Rule .03(5)(e).

Solvent Surcharges

The Act sets forth two different surcharges for drycleaning solvent transferred to drycleaning facilities in the State. For non-hydrocarbon based drycleaning solvent, the surcharge is \$10 per gallon. For hydrocarbon-based drycleaning solvent, the surcharge is \$1 per gallon. For more information as to which surcharge applies to a particular solvent, DCERP recommends consulting the instructions included with the annual registration forms. Surcharges are collected and forwarded to the Department by the seller of the solvent, regardless of whether the seller is in-state or out-of-state.

.04 BEST MANAGEMENT PRACTICES (BMPs)

It is suggested that prior to submitting an Application for Entry into the DCERP, and prior to planning or conducting a Facility Inspection, PEPs and DCACs should familiarize themselves with the BMPs Rule section.

A discussion of "Opportunity to Cure" BMP deficiencies can be found in Rule Section .05 (4). This topic is also included in the next section of this Guidance Document. Rule Section .05 also discusses how BMPs relate to DCERP Fund eligibility when the Applicant does not own or operate the drycleaning facility.

The DCERP Fund may not be used to set up or upgrade BMPs. The DCERP Fund can only be used for (approved) investigative and remedial response costs

HYDROCARBON SOLVENT USERS vs. NON-HYDROCARBON SOLVENT USERS

BMPs apply uniformly to both hydrocarbon and non-hydrocarbon solvent drycleaning facilities, with the following exception:

Rule 1200-1-17-.04(3)(a)(2)(ii) states that the requirements concerning the transport and disposal of hazardous waste from drycleaning facilities only apply to non-hydrocarbon solvent users. The BMP requirements related to the handling of hazardous waste do not apply to petroleum (hydrocarbon) solvent users because petroleum waste does not fall under the definition of hazardous waste. Thus, those drycleaning facilities that use Stoddard solvent fall under this exclusion. If a hydrocarbon solvent user desires to follow the more stringent requirements related to hazardous waste handling, this is perfectly acceptable.

BMPs for New Drycleaning Facilities and In-State Wholesale Distribution Facilities

Prior to initial registration with the DCERP, after the effective date of these regulations, drycleaning facilities and in-state wholesale distribution facilities shall provide certification that all Class 1 and Class 2 BMPs have been met. A facility inspection may be required for the purpose of ensuring compliance. The inspection shall be done according to a format determined by the department. (See Appendix E)

Two Groups of BMPs: Class 1 and Class 2

There are two groups of BMPs, Class 1 and Class 2. Within each of these groups there is a separate and distinct listing of BMPs for drycleaning facilities and for in-state wholesale distribution facilities (solvent suppliers). This section highlights Class 1 requirements.

Class 1 BMPs are to be implemented as of the effective date of this Rule. They are deemed to be critical for the prevention of drycleaning solvent releases to the environment. Class 1 BMPs focus upon solvent handling and operations practices.

In order to maintain Fund eligibility, after a Facility Inspection has been conducted, both Class 1 and Class 2 BMPs must be implemented. The Class 2 group includes measures that may require physical upgrades or changes to the facility. There is not a specific time frame or deadline for meeting Class 2 BMPs. Rather, the ability to receive DCERP funds to conduct activities beyond the Facility Inspection stage is linked to implementation of Class 2 BMPs.

Class 1 BMPs - Drycleaning Facilities

1. Compliance with Existing Regulations and Standards

A copy of the Perchloroethylene Air Emissions Standards for Drycleaning Facilities Rule 1200-3-31-.13 is available through the State of Tennessee, Dept. of Environment and Conservation, Division of Air Pollution Control (615) 532-0554. This state Rule is patterned after the federal air quality regulations promulgated in 1993 as the National Emissions Standards for Hazardous Air Pollutants (NESHAP). The majority of active drycleaning facilities in the State of Tennessee are perchloroethylene users.

Although aimed at reducing air emissions, the ongoing record keeping and equipment maintenance practices required under Rule 1200-3-31-.13 are significant steps toward ensuring that proper drycleaner management practices become part of the normal routine. Fewer releases of solvent to all media (air, soil, and water) can be expected from following these procedures.

2. Waste Management

This Class 1 BMP is directed at changing operations practices which may have contributed to the release of solvents to soil and water. This part of the Rule establishes a “zero-discharge” policy. Drycleaning facilities may not dispose of any solvent waste-containing materials, liquids, sludges, etc. in municipal trash receptacles, sanitary sewers, storm sewers, septic tanks, or any location where a release of solvent is possible, *regardless of the amount of waste a facility generates*.

No Exemption in Tennessee DCERP related to CESQG Status

Facilities that meet the EPA definition of a “Conditionally Exempt Small Quantity Generator” (CESQG) are not exempt from the hazardous waste management requirements set forth in this Rule. Thus, if a facility generates less than 220 pounds of hazardous waste per month, this fact does not exempt that facility from meeting the requirement to use a permitted hazardous waste transporter for disposal of such material at an authorized Treatment, Storage, or Disposal Facility (TSDF). All facilities shall also comply with the “zero-discharge” policy explained above.

3. Materials Storage and Waste Storage

Any solvent or solvent-containing materials and/or waste which are stored on site for future use or disposal must be securely stored under cover, in properly labeled containers, in good condition, and in a non high-traffic area of the facility [preferably indoors, and preferably in close proximity to the drycleaning machine(s)]. These containers shall be maintained in a securely closed condition at all times, other than at the time of adding or removing the contents, so as to minimize the possibility of accidental spillage of the contents. Material Safety Data Sheets (MSDS) shall be maintained on site for solvents used at the facility.

4. Management of Releases of Drycleaning Solvents

This program does not specify what “release prevention methods” a facility should use. It is expected that during a Facility Inspection, the facility operator or other personnel could explain what steps would be taken to clean up a spill, what materials would be used, where these materials are kept, what persons would be involved in clean-up activities, etc.

While a written Spill Contingency Plan is not required for drycleaning facilities, the DCERP suggests that drycleaning facilities review this Class 1 BMP established for distribution facilities. Prior planning for spills and use of methods that minimize or prevent spills are worthwhile management practices for all facilities to follow.

Releases that may pose an imminent and substantial threat to human health are required to be reported in this program. In accordance with Rule 1200-1-17-.08(5)(d), after being accepted into the DCERP the reimbursement applicant must also report any solvent releases which may impact the investigation or remediation of the site. For general comparison, under Rule 1200--1-13-.05 (2) of the Division of Superfund, the following definition concerning sites that pose an imminent and substantial danger is set forth:

“Inactive hazardous substance sites that constitute an imminent, substantial danger” is an inactive hazardous substance site where there is a threat of danger to the public health, safety, or environment which is both real and presently existing. Such situations may include, but are not limited to one or more of the following: an immediate action is necessary to minimize an ongoing threat to the public health or pollution of the environment, an inactive hazardous substance site where there is an active release, where direct access to the hazardous substance is not controlled, or where incompatible hazardous substances are found in close proximity.

5. Certification

Effective October 15, 1998, each drycleaning facility shall be staffed with at least one person who is a Certified Environmental Drycleaner (CED). The purpose of the certification requirement is to promote the use and awareness of operations practices that are pollution-prevention oriented.

Currently there is one DCERP Board approved provider for the Certified Environmental Drycleaner designation, the International Fabricare Association (IFI). For more information from IFI concerning the program and examination call IFI at 1-800-638-2627, extension 144, or Professional Testing Corporation at 212-852-0400.

6. Solvent Delivery Systems

Care shall be exercised in the delivery of drycleaning solvent to minimize the possibility of spills or releases. Pouring of solvents from open containers or other methods is not allowed. Effective October 15, 2000, non-hydrocarbon based drycleaning solvent shall be delivered via closed, direct-coupled delivery systems.

Class 1 BMPs - In-state Wholesale Distribution Facilities

1. Spill Contingency Plan

The purpose of the Spill Contingency Plan requirement is to ensure that, in the event of a release of drycleaning solvents at a distribution facility, there is a plan in place for responding to such an event. The process of developing and/or annually reviewing such a Plan is expected to not only minimize release impacts but in general promote a pollution-prevention operations orientation. As such it serves a purpose similar to the Perchloroethylene Air Emissions Standards Rule 1200-3031-.13 that is applicable to the PCE drycleaning facilities.

2. Materials Storage and Handling

In-state wholesale distribution facilities are required to conduct monthly inspections of drycleaning solvent containers and storage areas and maintain a logbook of such inspections.

3. Management of Releases of Drycleaning Solvent

In-state wholesale distribution facilities are required to have designated personnel to handle spills and a primary coordinator for spills or releases. The notification requirement concerning imminent and substantial threats to human health is the same as the requirement applicable to drycleaning facilities.

.05 PROGRAM QUALIFICATIONS AND PROCEDURES FOR THE TENNESSEE DCERP

Key Elements of the Technical Program

General

Section .05 of the Rule outlines the technical portion of the program. Following receipt and review of an Application for Entry into the DCERP, submitted by a PEP, DCERP staff will make a preliminary determination as to fund eligibility. Then, following the PEPs selection of a DCAC to perform the Facility Inspection and receipt of approval from DCERP to proceed, a Facility Inspection will be conducted as the first phase of Fund-eligible work.

A flow-chart outline of the step-by-step process from Facility Inspection through Remediation is included in this section. Detailed information concerning the five phases of work in the program: Facility Inspection, Prioritization Investigation, Solvent Impact Assessment, Remedial Alternatives Study, and Remediation, is also included in this section.

Pre-approval of Work Plans and Cost Proposals

All work plans and cost proposals are to be approved by the DCERP prior to conducting fund-eligible work. The only exception is for the Facility Inspection, a work plan and cost proposal are not required to be prepared for those cases where maximum allowable rates apply.

In Rule Section .08(1) there is a provision for performing DCERP-approved actions prior to availability of DCERP funds. Under this scenario a work plan and cost proposal would still need to be submitted to the DCERP for approval prior to commencement of the work.

The project work plans and cost proposals submitted for approval should not be prepared as "low-ball" estimates, but as realistic estimates based on actual, expected time requirements, expected field and subsurface regimes, "best-professional-judgment" sample needs, etc.

Approval of Budgets for Work Plan Preparation

For work beyond the Prioritization Investigation (PI) stage, the DCERP will also pre-approve a Work Plan Budget for the (labor) costs associated with preparing detailed work plans and costs proposals. The Work Plan Budget submittal should be brief and may be submitted as a letter.

The Work Plan Budget shall identify the overall work plan scope, the tasks to be included in the work plan, and the number of hours and the hourly billing rate (multiplier factor) used to derive the Work Plan Budget amount.

The maximum cost established for Task Group A of the PI already takes into account preparation of a work plan and cost proposal for both task groups of the PI phase of work. The Guidance Document sections that follow on the Facility Inspection (FI) and PI both provide scope of work outlines for these work phases. If the DCERP is presented with a (written) request to approve either an FI or a PI with an expanded scope of work, the costs associated with preparing the expanded work plan(s) may be presented for consideration by DCERP in this request.

Who May Prepare Work Plans and Sign Reports

In accordance with Rule Section 1200-1-17-.09(3)(h), all plans and reports submitted to the Department shall be prepared and signed by the registered Professional Engineer or Professional Geologist who prepares or is responsible for the plan or report.

Change Orders

The DCERP will reimburse for costs incurred which are in accordance with an approved work plan and cost proposal. However, there may be instances where minor changes to a work plan or cost proposal are needed due to unforeseen field situations, contaminant conditions, etc. Since control of even "minor" cost variations is important for overall management of the DCERP Fund, a process has been set up for handling these situations.

An amended written work plan/cost proposal is to be submitted at the time of the request. If time constraints require DCERP approval of a change before an amended work plan/cost proposal can be submitted, then oral approval may be sought from the DCERP. As soon as practicable and no later than two working days following receipt of the oral approval a written amendment shall be submitted. See Rule Section .08 (6)(g) for a summary of the requirements.

Prioritization

For activities beyond the Facility Inspection and Prioritization Investigation phases a site priority ranking process will be used to determine the order of further activities. Sites will be prioritized with regards to relative threats to human health and the environment posed at each site.

Following completion of the limited-scope Prioritization Investigation (PI), a Prioritization Ranking (PR) shall be completed and submitted to the DCERP along with the PI report. The PR will be used to determine the order in which sites advance to the Solvent Impact Assessment phase. A copy of the PR is included in this Guidance Document. Following completion of Interim Action(s), Supplemental Investigation(s), a Solvent Impact Assessment, and/or other DCERP-requested activities, sites will then be prioritized for remedial activities.

At this stage in the program hydrocarbon solvent and non-hydrocarbon solvent sites will be divided into two groups. A proportionate amount of DCERP fees collected from hydrocarbon-solvent sites during the preceding year will be dedicated to conducting remedial activities at those sites.

Use of Approved Laboratories

Any laboratory conducting sample analyses that are to be used as data in the DCERP shall be qualified as an Approved Laboratory under the certification program established by the Division of Underground Storage Tanks within the Department of Environment and Conservation. The laboratory shall have been an approved laboratory as of the date(s) the sample(s) were analyzed.

Basic Requirements of Work Plans and Cost Proposals

Work plans and cost proposals shall be prepared according to the following basic requirements:

- work plans and cost proposals are to be typewritten, readable, and organized by specific task;
- separate cost entries are to be made for labor (with field activities separated from report preparation and other office activities), materials, analytical fees, consumable supplies, rental equipment, travel time, per diem charges, subcontractor work, etc.;
- unit costs are to be presented, with quantity multiplier factors explicitly stated or easily derivable from total cost calculations;
- each professional service labor category to be used is to be shown, by task;
- numbers of labor hours should be shown for each billing category, by task;
- assumptions and/or contingencies that are built into the work plan/cost proposal shall be described.

Invoicing of Work - Reimbursement Applications

Invoices for work conducted under an approved work plan and cost proposal shall, to the greatest extent possible, contain the same information and cost breakdown as was included in the approved work plan and cost proposal. This will allow for efficient and cost-effective review and processing of reimbursement applications.

STEPS OF THE DRYCLEANER RESPONSE PROGRAM ¹

THE PEP SHALL:	THE DEPARTMENT SHALL:
1a Submit an Application for Entry into the DCERP	
	1a Confirm to PEP that Application has been received; identify any deficiencies, then:
1b If requested by the Department, correct any deficiencies noted on the Application; resubmit amended Application	
	1b Notify PEP that Application has been accepted into DCERP; request DCAC selection from PEP
2 Select a DCAC from DCERP list. ² Notify Dept. of the selection; provide contract verification & written work schedule for conducting FI to the Department	
	2 Notify PEP to proceed with Facility Inspection
3a Perform Facility Inspection in accordance with DCERP Guidance Document	
3b Submit Facility Inspection report to Dept.	
	3a Review the Facility Inspection report
	3b Notify PEP of the fund-eligibility determination, acceptability of FI report; request submittal of work plan & cost proposal for PI work phase
4 Submit DCAC selection, work plan, cost proposal and schedule for Prioritization Investigation (PI) to the Department	
	4a Review & approve PI work plan & cost proposal
	4b Notify PEP to proceed with the PI
5a Conduct PI in accordance with DCERP Guidance Document	
5b Submit a PI report & Prioritization Ranking Form to the Department	
	5a Review PI report & Ranking Form. Determine site priority ranking for next work phase
	5b Notify PEP of site ranking & potential schedule for approval to prepare Solvent Impact Assessment (SIA) work plan
6 When requested by the Dept., submit DCAC selection, work plan, cost proposal, & schedule for SIA	
	6a Review & approve SIA work plan & cost proposal
	6b Notify PEP to proceed with SIA
7a Conduct SIA in accordance with DCERP Guidance Document	
7b Submit SIA report to Department	

	7a Review SIA report; provide comments to PEP; determine whether Remedial Alternatives Study (RAS) is needed
8a If requested by Dept., select DCAC & have DCAC submit work plan, cost proposal, schedule for submittal of RAS	
	8a Review & approve RAS work plan & cost proposal
	8b Notify PEP to proceed with RAS preparation
9a Prepare RAS in accordance with DCERP Guidance Document & any comments provided by Department	
9b Submit RAS to Department	
	9a Review RAS report; provide comments to PEP; determine appropriate remedial option; determine site's remediation ranking
	9b Notify PEP of selected remedial option and site ranking; request work plan, cost proposal, & schedule for implementation
10a Select a DCAC & have DCAC prepare work plan, cost proposal, & schedule for remedial option implementation; submit to Department	
	10a Review & approve remedial action work plan
	10b Notify PEP to proceed with approved plan
11a Implement remedial option in accordance with approved plans	
11b Submit periodic progress reports to the Department according to an approved schedule	
	11 Review periodic progress report; provide comments to PEP
12 Submit Completion Report to the Department	
	12a Review Completion Report.
	12b Issue letter of completion to PEP

¹ A facility which enters the DCERP may not proceed through all of the steps outlined here. Following a given phase of work the DCERP may determine that no further action is needed at a facility. Any such determinations will be communicated in writing to the Applicant.

² In accordance with Rule 1200-1-17-.09, DCERP Applicants (PEPs) will be selecting a DCAC for conducting each of (4) major phases of work in the program. These (4) categories are: (1) Facility Inspection, (2) Site Investigation (includes the Prioritization Investigation and Solvent Impact Assessment phases of work), (3) Remediation Oversight (includes preparation of Remedial Alternatives Studies) , and (4) Remediation (includes implementation of remedial activities).

Contractors may submit applications and qualify for any or all of the (4) DCAC work categories noted above. The selection of a DCAC for any particular phase of work is the choice of the Applicant. The DCERP requires that the Applicant's chosen contractor is on the approved contractors list for that particular category of work. There are no restrictions concerning the use of a single qualified contractor for completing multiple phases of work, etc.

.05(4) Fund Eligibility Determination; Opportunity to Cure Provisions

Notice of Fund Eligibility

After the Department has reviewed the Application for Entry into the DCERP and the Facility Inspection report, the Department will notify all PEPs (including the applicant) in writing regarding whether the site has been accepted into the program and is Fund eligible. If the site is not accepted, the notice will include the reasons for denial and the opportunity to cure any deficiencies.

Reasons for Denial and Opportunity to Cure

The following is the list of reasons the Department may cite for denying access into the program and Fund eligibility:

- (1) the applicant does not meet the definition of a current or prior owner or operator of an active or abandoned drycleaning facility, in-state wholesale distribution facility, or an impacted third party;
- (2) the facility does not meet the definition of an abandoned or active drycleaning facility, or in-state wholesale distribution facility;
- (3) the facility has failed to register with the program as required by the Act and the Rule;
- (4) there are applicable registration fees, penalties, and/or interest outstanding;
- (5) there are applicable solvent surcharge fees and/or penalties outstanding;
- (6) applicable BMPs have not been implemented at the facility;
- (7) the Facility Inspection was improperly conducted; and
- (8) the applicant or facility has failed to comply with other requirements of the Act and/or the Rule.

If the Department denies a site access into the program, the PEP will have an opportunity to cure any deficiencies which are noted. The letter denying the site access into the program will specify a time frame for curing these deficiencies. If the PEP is successful at curing the deficiencies within the designated time frame, the site will be granted entry into the program and will proceed to a Prioritization Investigation.

If the PEP does not cure the noted deficiencies within the specified time frame, the site will be denied Fund access. This denial is appealable to the Board by the filing of a written petition within 30 days from the Department's mailing of the notice of denial of Fund access. If no appeal is made or if the Board upholds the denial of Fund access, the Department may initiate activities to evaluate the site under the "Inactive Hazardous Waste Substance Site Remedial Action Program."

Curing Deficiencies

1. Failure to register or pay applicable fees and surcharges

As noted in Rule .03, all facilities must be properly registered in order to receive funds from the program. This requirement includes all active, abandoned, and wholesale distribution facilities. If the Facility Inspection reveals that a particular facility is not registered or has outstanding fees, the PEP needs to fill out the proper registration forms and pay any applicable fees which remain due in order to cure this deficiency.

2. Failure to implement BMPs

The failure to implement applicable BMPs affects both applications from the facility operator and the property owner or other impacted third parties. Different provisions apply to curing such a deficiency depending upon the status of the PEP.

It is important to note that in accordance with Rule .04(7), where the failure to meet a BMP significantly causes or contributes to a release of solvent or a failure to contain a release of solvent, the PEP will not be Fund eligible for reimbursement of response costs related to the release, regardless of whether or not the failure to implement the BMP is cured. Rule .04(7) also states that if a substantial release is caused by gross negligence the Department or the Board may withdraw Fund eligibility, withhold a registration renewal, or terminate a facility's registration.

Facility Operator:

If a facility operator has not implemented BMPs, initially that operator will only be eligible for reimbursement of the costs of the initial Facility Inspection. Once the operator implements the missing BMPs, that operator can request a follow-up inspection. This follow-up inspection will be conducted at the PEPs own expense and will not be reimbursed from the Fund. If the follow-up inspection reveals that all applicable BMPs have now been implemented, the PEP will be Fund eligible once again.

Real Property Owner:

The real property owner of an impacted site is eligible to participate in the program as an impacted third party. Where the real property owned is the site of an active drycleaning facility or distribution facility, this PEP has some special burdens under the DCERP program: this PEP is expected to use its contractual authority with its tenant to require that BMPs be implemented and to notify the Department when its tenant has failed to implement BMPs.

The real property owner may either file its own application for entry into the program or may join in the application of a facility operator. Regardless of which method of entry the real property owner has chosen, the facility itself will still need to comply with BMPs unless it is an abandoned facility. If applicable BMPs have not been implemented, it does not matter whether the real property owner has used its contractual power to try to get the BMPs implemented or whether the real property owner has notified the Department that its tenant has failed to implement the BMPs. The real property owner will still be ineligible for Fund reimbursement until either the BMPs are implemented or the tenancy of the operator of the facility is terminated.

Other Impacted Third Parties:

Impacted third parties who do not own the property on which a facility is located are not responsible for a failure to implement BMPs and their Fund eligibility does not depend upon curing such failure. However, when an impacted third party files an application for entry, the Department will notify the facility operator and/or real property owner of the application for entry and provide those PEPs with the opportunity to enter the program within a specified time period.

If neither the facility operator nor the real property owner enters the program and corrects any BMP deficiencies, the Department may initiate activities to evaluate the site under the "Inactive Hazardous Substance Site Remedial Action Program." If the site is evaluated under this program, the DCERP Fund will be responsible for paying the eligible costs of the impacted third party's apportioned share, less that party's deductible.

.05(3) FACILITY INSPECTION

This section provides guidance for conducting a Facility Inspection (FI) under the DCERP.

General

Maximum allowable costs have been established for conducting the FI at an active drycleaning facility. These costs are presented in the Reasonable Rate section of this document. It is not necessary for a work plan and cost proposal to be prepared for approval of the FI in cases where maximum allowable costs apply. This section provides the scope of work that is to be used as the DCAC's work plan for conducting the FI. It is however, necessary for the PEP to obtain written confirmation from the Department prior to proceeding with any FI activities.

PEPs are requested to submit a work plan and cost proposal for the anticipated costs associated with completing the FI at an abandoned drycleaning facility or solvent distribution facility. Specific activities or tasks required to complete the FI at these facilities that exceed the scope of work given here are to be noted in the work plan submitted for approval. The Department also expects that in many instances the FI costs at these facilities will not exceed the maximum allowable costs established for active drycleaning facilities.

Purpose of Investigation

The purpose of the Facility Inspection is to determine Fund Eligibility for the facility and is the beginning of the environmental investigation process. The Facility Inspection provides relevant information concerning the facility in order that proper decisions regarding Fund Eligibility and future site action can be made.

To accomplish this purpose, the FI, along with Task Group A of the PI, is considered to be equivalent to a Phase 1 Property Assessment. Components of the FI and Task Group A of the PI presented in this Guidance Document should be consistent with the latest edition of the American Society for Testing and Materials (ASTM) Standard for Phase 1 Environmental Site Assessment E 1527.

At a minimum, the Facility Inspection will include a records review and an on-site inspection to determine compliance with existing Best Management Practices (BMPs). A Facility Inspection Report will be submitted to the Department for review and determination of fund eligibility.

Objectives

The objectives of the Facility Inspection are:

- To determine whether the facility is a registered facility and has paid all appropriate fees;
- To determine whether the facility is in compliance with existing and applicable BMPs;
- To establish foundation information for future investigations;
- To provide information to be used in conjunction with the Facility Registration and the Application for Entry into the DCERP to determine fund eligibility of the facility.

Records Review

The records review shall be conducted by the DCAC. The PEP or facility operator shall make a reasonable effort to make facility records available to the DCAC for the purpose of this inspection. In the event that the requested records are not available for review, the facility

operator shall initiate a program to cure any record keeping deficiencies. The records review shall consist of a review and documentation of the following:

- Facility Registration Certificate;
- Solvent waste disposal manifests;
- Solvent purchase, usage, mileage records;
- Equipment maintenance, repair, and/or inspection logs;
- Solvent release and/or cleanup records, if any;
- Employment records, FTE documentation;
- Material Safety Data Sheets (MSDS) for the solvents used at the facility;

On-Site Inspection

The On-Site Inspection will be conducted by the DCAC. The PEP or facility operator will assist the DCAC by allowing access to all areas of the facility and providing information requested. The On-Site Inspection will include the following:

- Inspection of equipment for evidence of solvent or vapor leaks;
- Inspection of solvent transfer and storage areas;
- Inspection of waste storage and disposal areas;
- Visible evidence of solvent releases;
- Employee interviews;
- General housekeeping evaluation;
- Class 1 and Class 2 BMPs.
- Proper labeling of drums and containers

Facility Inspection Report

In order to fulfill the requirements of the Facility Inspection the PEP must submit a Facility Inspection Report to the Department describing the results of the records review and the on-site inspection. A generalized format for the Facility Inspection Report will include the following:

- Introduction;
- Generalized Site Location Map to scale which shows location of facility with respect to adjacent businesses and streets;
- Site Features Map to scale which depicts facility layout, building location on the property, and location of any areas of interest noted in the Facility Inspection Report;
- Summary of the information gathered in the Records Review;
- Summary of the observations made during the On-Site Facility Inspection;
- Conclusions regarding compliance with Class 1 and Class 2 BMPs;
- Recommendations regarding fund eligibility;
- Recommendations regarding further actions at the facility.

.05(5) PRIORITIZATION INVESTIGATION

This section provides guidance for conducting a Prioritization Investigation (PI) under the DCERP.

General

The PI has been divided into Task Groups A and B. The activities included in these Task Groups are described below. This section provides the scope of work that is to be used as the basis for preparation of the PI work plan.

Maximum allowable costs have been established to conduct Task Group A of the PI at active drycleaning facilities (only). These costs are presented in the Reasonable Rate section of this document. It is not necessary for the PI work plan and cost proposal to address Task Group A in cases where maximum allowable costs apply.

No maximum allowable costs have been established to conduct Task Group A at abandoned facilities or solvent distribution facilities. Also, no maximum allowable costs have been established for Task Group B. Specific activities or tasks required to complete the PI at facilities that exceed the scope of work given here are to be noted in the work plan submitted for approval.

Task Group A

Task Group A includes labor and other costs associated with preparation of a work plan, site reconnaissance, drafting of maps, records research, and preparation of the Prioritization Investigation Report and Prioritization Ranking Form. The DCERP expects that all relevant data, records or other information obtained during the Facility Inspection work phase will be utilized (and not “re-researched”) during the PI phase of work.

Task Group B

Task Group B includes costs associated with conducting the media sampling activities of the Prioritization Investigation. Task Group B includes, but is not limited to, costs associated with rental equipment, sampling materials, sample collection, sample shipping, personnel travel costs, laboratory analytical costs, and other subcontractor costs related to this task group.

Purpose of Investigation

The purpose of the Prioritization Investigation is to present both analytical data and research information relevant to the facility. The results of the investigation will be used, along with the Facility Inspection, to establish the order, relative to other eligible facilities, in which funds will be allocated for additional investigation and other activities.

To accomplish this purpose, the FI, along with Task Group A of the PI, is considered to be equivalent to a Phase 1 Property Assessment. Components of the FI and Task Group A of the PI presented in this Guidance Document should be consistent with the latest edition of the American Society for Testing and Materials (ASTM) Standard for Phase I Environmental Site Assessments E 1527.

Objectives

The objectives of the Prioritization Investigation are:

- To determine the relative need for additional inquiry or investigation;
- To establish a site's relative priority ranking for fund disbursement.

The Work Plan, Cost Proposal, and Work Schedule

The PEP will prepare and submit to the Department a work plan, cost proposal, and schedule of work for completing the PI. The work plan and cost proposal shall be broken down into Task Group A and Task Group B areas. The sum of (approved) Task Group A and Task Group B costs shall be the maximum cost which may not be exceeded in the Prioritization Investigation.

The work plan will include:

- A description of the methods and resources to be used for the facility and surrounding area historical records review;
- A description of the methods to be used for the physical features investigations;
- A brief summary of the Facility Inspection findings;
- A presentation of the proposed media sampling and analytical methods for the facility;
- A site drawing depicting proposed sampling locations;
- A section addressing health and safety issues relevant to the facility and the prioritization investigation (in accordance with 29 CFR 1910.120).

The cost proposal will include a detailed itemized estimate of personnel and equipment rates, estimated time, laboratory costs, travel, shipping and miscellaneous expenses required to accomplish the proposed scope of work according to the work plan.

The work schedule will include a proposed time frame for each phase of the investigation and an estimated completion time from the date of notice to proceed.

TASK GROUP A - SITE RESEARCH, RECONNAISSANCE, AND REPORTING

SITE HISTORY

Provide a history of the property including prior uses and regulatory history.

Prior Uses of the Property

Provide a history of the prior uses of the property to at least 1940, or reasonably ascertainable first developed use, whichever is the earlier, as defined in ASTM E 1527. In addition, this information shall include the following details for each past ownership and/or use:

- Full name of each owner;
- Name of operator for each period where use was commercial or industrial;
- Year(s) of ownership;
- Years of operation for each period where use was commercial or industrial;
- Type of business or industry for each period where use was commercial or industrial;
- Potential hazardous materials used, or hazardous waste generated for each where use was commercial or industrial;
- If a drycleaning facility, what solvent was used.
- Current owner(s)'s and operators' names and titles, and addresses;
- Copy of current property deed.

Regulatory History

Provide information regarding the regulatory history of the property to include:

- Previous environmental investigations;
- Previous remedial actions;
- If previous environmental activities have been identified, provide the location and details of past and present hazardous materials reclamation, storage, or disposal areas;
- A summary of all past or present notices of violation or enforcement actions conducted by a regulatory authority regarding the mismanagement of solvents on the property. Include the issuing authority, violator's name(s), violation date, violation type, steps taken to correct the violation, and status of the enforcement action;
- Past or present hazardous materials disposal or spill episodes which are documented or alleged to have taken place on or near the property. Specify when the episode occurred, nature, quantity and location of the episode;
- For each owner or occupant, document any cleanups of solvent spills or disposal incidents on or near the property.

Historical Information Sources

There are a number of reference sources which could be helpful in determining the history of a property. If available and applicable, the sources should be researched and the associated information provided. Electronic environmental data base services may be used and referenced provided information obtained is complete and up to date. Additional reference sources may include but are not limited to the following:

- Sanborn Fire Insurance Maps;
- RCRA Hazardous Waste Generator Lists;
- Polk, Cole or comparable City Directory;
- Tennessee Department of Environment and Conservation (TDEC) Division of Water Pollution Control surface water quality data and NPDES information;
- TDEC Division of Water Supply or health Department public water supply data, well log data, State well index;
- TDEC Division of Underground Storage Tanks (UST) data on nearby UST sites;
- Environmental Protection Agency (EPA) Freedom of Information Requests via EPA Region IV office;
- Historic and current USGS topographic maps, geologic and hydrologic reports, USGS well logs;
- Historic Land Appraisals, which often contain maps and historic photographs of property;
- Tennessee Historic Commission and local historic societies;
- Superfund Amendments and Re-authorization Act (SARA) Title III Reports;
- Federal Railroad Administration or Department of Transportation spill records;
- TDEC regional field offices;
- TDEC Division of Archaeology site files
- Environmental Impact Statements and Environmental Assessment Worksheets;
- Local Libraries;
- Local newspaper files;
- Local fire Department files;
- Aerial photographs; and
- Local utilities.

PROPERTY FEATURES

A property inspection is necessary to determine the presence of various property structures and features. The property inspection shall state the date of the inspection and the name of the person conducting the inspection.

Much of this information may have been gathered during the FI, however if the time between the FI and PI is greater than 120 days or if the contractor conducting the FI and PI are not the same, a second site visit is recommended in order to document that changes have or have not occurred. The inspection should include descriptions of the following and reference relevant sections of the Facility Inspection Report:

Location of Property and Surrounding Land Use

Describe the nature of surrounding land usage's and the location of the property providing:

- United States Geological Survey (USGS) 7.5 minute quadrangle;
- Longitude and latitude;
- A tax map or plat with surrounding parcels showing ownership.

Note: Additional guidance concerning preparation of maps is provided later in this section.

Surface and Structural Features

Describe site surface and structural features to include:

- Areas of stressed vegetation, staining or subsidence;
- Burned areas;
- Any other indication of contaminant source or release;
- Roof drains, floor drains, storm drains, outfalls, ditches, and creeks (site surface drainage);
- Adjacent property conditions;
- System operational problems;
- Photographs of the property.

Above Ground and Underground Storage Tanks

Provide information regarding past and present above ground and underground storage tanks at the site or on adjacent properties. Include both registered and unregistered tanks, and details such as:

- Location, size, age, composition, condition, and registration information;
- Containment devices and structures;
- Tank vent and fill pipes;
- How past tanks were removed, abandoned or decommissioned;
- Historic and current substances stored in tanks;
- Tank tightness test results and methodologies;
- History of tank cleanings, and disposition of sludges;
- Any available analytical data and/or MSDS for stored materials;
- Location of product pipelines, trenches, and conduits.

Storage Containers

Identify and describe any storage containers (i.e. drums, buckets, cans) that currently or historically have been located on the property. Include information such as:

- Quantity, type, size, age, and location;
- Dates of use;
- Any available analytical or MSDS data;
- Condition of container (open/closed, empty/full, overpacked, rusting, bulging, leaking, etc.);
- Evidence of exterior staining or deterioration;
- Storage practices (indoors, outdoors, stacked, etc.).

Waste Disposal Areas

Provide information regarding the current and historic disposal of any solids, liquids, or sludges at the site or on adjacent properties. Include information regarding:

- Permitted or unpermitted landfills;
- Unpermitted or open dumps;
- Municipal or industrial wastes;
- Storage or staging areas;
- Other solid wastes (waste tires, white goods, etc.).

Septic Systems

Provide details regarding any current or historic septic systems on the property including:

- Location, size and construction;
- Placement of field lines;
- Was solvent ever disposed in the septic system;
- Plant areas, appliances or machinery that discharge to the septic system;
- Septic system surveys associated with drainage problems;
- Year and method septic system was decommissioned;
- Available information regarding decommissioning;
- Date connected to municipal sewer, and if sewer is sanitary, storm, or combined.

Utilities

Provide historical and current location, size, and construction information regarding utilities at or adjacent to the property including:

- Available utility maps with concise legends;
- Municipal water supplies and sewer service including connection dates;
- Underground telephone lines, gas lines, and pipelines;
- Transformers and other electrical components;
- Above ground utilities.

Wells

Describe the types, locations, status and sizes of any of the following located on-site:

- Water supply, monitoring, injection, or dry wells;
- Sumps;
- Pits;
- Floor drains;
- Hazardous waste traps (oil/water separator).

For each of the above, provide the following if applicable:

- Dates installed;
- Construction type;
- Operational history;
- Waste types;
- Decommissioning;
- Analytical data or sampling results.

PHYSICAL SETTING

Geologic Setting

Based on a review of reasonably ascertainable materials (USGS topographic and geologic maps) provide the following information:

- A description of the regional geologic section;
- A description of the geologic section at the site;
- A description of the soil and/or bedrock lithologies anticipated at the site.

Topographic setting

Based on a site inspection, describe the site and adjacent area topographic setting to include:

- Surface runoff direction;
- Drainage features;
- Sinkholes.

Identification of Potential Receptors - Water Use Survey

Perform a water use survey within a 1 mile radius of the site. The following action shall take place at a minimum:

- Personally contact, by phone or in person, all water users within a 500 foot radius of the site to determine the source and use of the water used;
- Perform a field survey within a one-half mile radius of the site to determine the existence of any water use sources or receptors. These sources may include domestic wells, springs, ponds or streams;
- Perform a records search within a one mile radius of the site to determine the existence of any water use sources or receptors. These sources may include domestic wells, springs, ponds or streams;
- Review available maps for evidence of springs, sinkholes, etc.;
- Clearly identify the type of drinking water source for the facility and surrounding area. For groundwater sources identify the drinking water aquifer unit, nature of confinement, location of the nearest wellfield, and well depths and screened intervals for the wellfield. For surface water sources, identify the nearest surface water intake location for the water supply. Document the information sources used for this data and the date(s) that the information was obtained.

MAPS AND DRAWINGS

Property Location Map

Provide a property location map depicting the location of the site on a USGS 7.5 minute topographic quadrangle map. The property location map will include:

- The site location;
- Legend (to include USGS topographic map name);
- North arrow;
- Title block showing facility name, address, and city (at minimum).

Building Drawing

Provide a to-scale drawing of the facility that includes the following:

- Locations of drycleaning machines;
- Locations of storage rooms and utility rooms;
- Locations of bathrooms, service sinks and floor drains;
- Locations of utility lines (sewer, water, gas, etc.).

Note: It may be possible to combine the building drawing with the property map; please keep maps readable.

Property Map

Provide a to-scale map of the property that includes the following:

- Property boundary lines;
- Building locations;
- Waste disposal areas (dumpsters, trash cans, etc.);
- On-site or adjacent water bodies (rivers, creeks, ponds, etc.);
- Engineered structures such as utility pathways, drainage ways, diversion ditches, manholes, septic system drain fields;
- On-site or adjacent streets, roads, parking areas, and railroads;

Media Sampling Maps

Provide separate sample location and sample results maps which show:

- Location of any previous soil borings or wells;
- Location of soil gas, surficial soil, soil, sediment, ground water, or surface water samples collected;
- Analytical results.

Map Format

The format of all maps should include:

- A bar scale;
- A north arrow;
- A legend;
- Base map sources;
- Bench marks.

TASK GROUP B - MEDIA INVESTIGATION

The media investigation phase of the PI includes collecting media samples from select locations at the facility. During the PI the intent is to generate sufficient data to make a determination of the presence or absence of solvents at the site. In order to make a cost effective determination, minimally invasive characterization methods will be employed.

The media sampled may include soil gas, surficial soil, sediment, and/or surface water. The sampling locations selected should represent areas of the highest probability of being contaminated. Suggested sampling areas include but are not limited to:

- Along utility trenches;
- Solvent delivery and storage areas;
- Near roof downspouts;
- Back door;
- Floor drains if liquid is present;
- Dumpster and trash can locations;
- Drainage ditches, trenches, or creeks.

Media sampling techniques utilized in the Prioritization Investigation may include:

- Soil Gas;
- Direct Push;
- Hand Auger;
- Other methods, as appropriate for specific site conditions.

Note: If groundwater monitoring wells are already present at the site, it may be appropriate to sample these wells during the PI phase. Contact the Department prior to submitting a PI work plan and cost proposal to discuss these situations. The most recent groundwater sampling data available for such wells should be presented to the Department for review.

PRIORITIZATION INVESTIGATION REPORT AND RANKING FORM

The Prioritization Investigation Report shall be submitted to the Department upon conclusion of the PI. A generalized format for the prioritization report will be as follows:

- Executive Summary;
- Introduction;
- Site history;
- Physical setting;
- Property features;
- Maps and Drawings (at appropriate locations within the PI report);
- Media sampling event(s);
- Summary of analytical results;
- Conclusions and recommendations.

A completed Prioritization Ranking form shall be submitted to the Department along with the Prioritization Report.

.05(7)(b) SOLVENT IMPACT ASSESSMENT

This section provides guidance for conducting a Solvent Impact Assessment (SIA) under the DCERP.

Purpose

The purpose of the Solvent Impact Assessment (SIA) is to investigate, collect, develop, and evaluate the required information regarding a site to determine the need for remedial action and to support the selection of a remedial action that is protective of human health, public welfare, and the environment. The scope of the investigation is site specific and will depend on the amount and quality of available information. As new information becomes available, the scope may be reevaluated and, if appropriate, modified.

The SIA will involve accomplishing a subsurface characterization to collect the physical data required to accurately describe the existing subsurface conditions at the site. The subsurface characterization may include the determination of soil types and thicknesses, soil permeabilities, depth to ground water, ground water flow direction, hydraulic gradient, contaminant concentrations in soil and ground water, horizontal and vertical extent of contaminants in soil and ground water, and a description of the contaminants identified.

The initial focus of the SIA will be to investigate the area(s) identified in the FI and PI as having high probability of being impacted by release of drycleaning solvent.

Objectives

The objectives of the SIA include:

- Develop a work plan, cost proposal, and work schedule describing how the potential sources of contamination identified in the Facility Inspection and the Prioritization Investigation will be investigated;
- Establish an appropriate level of inquiry for a SIA;
- Evaluate the magnitude and extent of contamination and identify migration pathways and potential receptors of releases of dry cleaning solvent;
- Gather site specific data to be used to determine acceptable contaminant concentrations or cleanup levels using established regulatory levels, background evaluation, or risk assessment;
- Gather site and contaminant information allowing selection of a remedial technology, if remediation is necessary;
- Present recommendations for appropriate remedial actions.

The Work Plan, Cost Proposal, and Work Schedule

The PEP will prepare and submit to the Department a work plan, cost proposal, and schedule of work for completing the SIA. All work plans, cost proposals and work schedules will be approved by the Department prior to conducting any fund eligible work.

The work plan will include a detailed description of the investigative work required to complete the SIA. The SIA work plan will include:

- An accurate to scale site map clearly depicting locations of prominent and relevant, past and present site features, including but not limited to, buildings, retaining walls, fences, tanks, pipelines, waste piles, storage areas, utilities, and surface water features. The map will include property boundaries, a north arrow, and a scale bar;

- An accurate to scale site map depicting the locations of proposed borings, monitoring wells, sampling locations, and other areas of investigation;
- A Sampling and Analysis Plan (SAP) which includes a discussion of the rationale behind sampling locations, proposed boring/monitoring well depths, vertical sampling and screening intervals, and a discussion of parameters to be investigated;
- A Quality Assurance Project Plan (QAPP) which outlines measures to be used to ensure that data obtained are reliable, reproducible, and representative of conditions at the site;
- A site specific Health and Safety Plan that addresses the physical, chemical, and environmental hazards potentially encountered during the investigation.

The cost proposal will include a detailed itemized estimate of personnel and equipment rates, personnel time, laboratory costs, travel, shipping and miscellaneous expenses required to accomplish the proposed scope of work according to the accompanying work plan.

The work schedule will include a proposed time frame for each phase of the SIA and an estimated completion time from the date of notice to proceed.

If during the SIA conditions require that a change in the scope of work, budget, or work schedule is necessary, then an amended work plan, cost proposal, and schedule is to be submitted to the Department for approval prior to the commencement of any additional work. Oral approval may be granted by the Department in some instances. If oral approval is granted by the Department, then the written amended work plan, cost proposal, and work schedule must be submitted within two working days.

SAMPLING AND ANALYSIS PLAN (SAP)

A sampling and analysis plan will be prepared by the PEP for sampling activities which are part of the SIA. The sampling and analysis plan shall be implemented as approved by the Department. The sampling and analysis plan shall specify procedures that will ensure that sample collection, handling, and analysis will result in data of sufficient quality to plan and evaluate any remedial activities necessary at the site. The sampling and analysis plan shall consist of but not be limited to the following:

- Discussion of the purpose and objectives of data collection;
- Discussion of proposed soil test boring and monitoring well depths, vertical soil sampling and monitoring well screening intervals;
- Identification and justification of the location and frequency of sampling;
- Description of soil test boring methods and techniques;
- Descriptions of monitoring well construction.
- Procedures, protective of human health and the environment, for the management of wastes generated by investigation and sampling activities.

QUALITY ASSURANCE PROJECT PLAN (QAPP)

A Quality Assurance Project Plan (QAPP) will be required to ensure the validity of field and laboratory data produced through field activities. The QAPP can be presented as a separate document or included as a section of the SIA Work Plan. The QAPP shall include but not be limited to the following:

- Decontamination procedures;
- Instrument calibration schedule;
- Sample collection procedures;
- Quality Assurance/Quality Control soil and ground water samples;
- Sample preservation, labeling, chain of custody, and shipping;
- Laboratory analytical methods.

HEALTH AND SAFETY PLAN (HSP)

A Health and Safety Plan (HSP) will be presented with the SIA Work Plan. The HSP will be consistent with OSHA requirements as found in 29 CFR 1910.120. The Department may comment on the HSP but will not formally approve or disapprove it. As such the Department is not responsible for the enforcement of health and safety requirements. At a minimum the HSP will include the following:

- A description of the site, a site map, directions to the nearest medical emergency facility, and an area map with nearest medical emergency facility located;
- Descriptions of chemical, biological, and physical hazards that may be encountered during field activities;
- Descriptions of Personal Protective Equipment (PPE) required during field activities.
- Organizational chart identifying responsible safety personnel;
- Health and Safety monitoring equipment inventory;
- A description of the type of work anticipated at the site;
- Personnel decontamination requirements;
- Health and Safety monitoring plan;
- Emergency response plan;
- Name designation of the Site Safety Officer.

SOLVENT IMPACT ASSESSMENT REPORT PREPARATION

The Solvent Impact Assessment Report shall be submitted to the Department upon conclusion of the SIA. A generalized format for the SIA report is as follows:

Executive Summary

Introduction

- Site use history
- Site environmental investigation history

Site Location (maps already prepared for the PI report are to be included in the SIA report)

- Vicinity map (tax map)
- Site location map (USGS topographic)
- Property map

Physical Setting

- Description of site, vicinity, and area topography and features
- Site feature map
- Regional geologic section
- Identification of areas of concern

Soil Investigation

- Geology (descriptions of)
 - site geologic section
 - site soil and rock lithologies

Soil Test Borings

- Describe soil drilling and sampling methods
- Soil sample location maps
- Disposition of investigation derived soil waste

Soil Analytical Results

- Table of results from each sampling event
- Laboratory reports, chain of custody forms

Soil Properties

- Permeability
- Volumetric air content
- Volumetric water content
- Porosity
- Bulk density
- Fractional organic carbon
- Total organic carbon
- Atterburg Limits

Soil Contaminant Plume Maps

- Contour maps depicting horizontal extent of each contaminant present
- Cross sections depicting vertical extent of each contaminant present
- Calculations of contaminated soil mass

Ground Water Investigation

Hydrogeology

- Occurrence and movement of ground water
- Occurrence and movement of free product
- Water level data
- Potentiometric surface maps
- Hydraulic gradient
- Ground water flow rates

Monitoring Well Construction

- Describe monitoring well installation and construction methods
- Table of well materials used

Well development

- Describe procedures used to develop monitoring wells

Ground Water Sampling

- Description of ground water sample locations
- Description of procedures used to purge monitoring wells
- Description of ground water sampling methods and materials

Analytical Results

- Table of results from each sampling event
- Discussion of analytical results

Ground Water Contaminant Plume Maps

- Ground water sample location maps
- Contour maps depicting extent of ground water contamination
- Calculations of volume of contaminated ground water

Conclusions and recommendations

- Conclusions regarding soil and ground water contamination
- Identification of potential remedial alternatives, if applicable
- Recommendations for further action

Appendices

Field notes

Laboratory analytical reports

Boring logs

Monitoring well completion diagrams

Chain of custody records

Some items previously presented in the FI and PI reports will be repeated (referenced) in the SIA report. Information will be updated, revised or altered as appropriate.

.05(8) REMEDIAL ALTERNATIVES STUDY (RAS)

This section provides guidance for the Remedial Alternatives Study (RAS) phase of work.

Purpose

The purpose of the RAS is to provide an evaluation of the technical feasibility, costs, and effectiveness of implementing various remedial approaches at the subject DCERP site. The RAS will rely and build upon the information collected during the Solvent Impact Assessment (SIA) and the recommendations contained in the SIA Report.

Preparation of a RAS Report may or may not be requested by the Department following a review of previous investigation findings and reports. For example, if a site is to be placed in the Monitoring Only remediation ranking group, a RAS Report would neither be needed nor requested.

Guidelines for RAS Report Preparation

The RAS may evaluate active and/or passive remedial alternatives. The Department will provide direction concerning the specific remedial alternatives that are to be addressed during the RAS process and in the RAS Report.

Pilot testing may be needed in order to accurately evaluate a remedial action's technical feasibility and overall effectiveness in the subject site area(s). If this testing was not performed during the SIA work phase, a work plan and cost proposal for pilot testing may be submitted for DCERP approval and this testing may be conducted prior to preparing the RAS Report.

The RAS Report will contain the following elements:

- a comparison of remedial options and their respective costs, including long term operation and maintenance costs, emissions control costs, waste discharge costs, etc.
- expected contaminant reductions and reduction time frames to be achieved, for each remedial option evaluated
- a description of pilot (treatability) testing activities and findings, if conducted
- a description of potential risks and safety hazards associated with each remedial option
- a recommended course of remedial action and rationale for that recommendation
- conceptual design for the recommended remedial action and associated drawings

Presumptive Remedies

In the context of environmental work, presumptive remedies are those remedial alternatives that have, through previous experience, demonstrated an ability to meet chosen remediation or cleanup goals for a specified type of site.

The presumptive remedies identified by the U.S. Environmental Protection Agency (EPA) for federally regulated sites contaminated by volatile organic compounds in soil or groundwater may or may not be appropriate presumptive remedies for use in this program.

The goal of the DCERP with respect to approving remedial options and funding remediation activities is to ensure that "Such standards, methods, and techniques shall, to the maximum extent practicable, ...be cost-effective, reasonable, and technically feasible." (TCA 68-217-110).

Where it is practicable to apply standardized remedial methods or (presumptive) remedies for DCERP sites with certain common contaminant characteristics and physical settings, an Eligible Party (or their DCAC) will be requested to make recommendations concerning such methods and remedies. These remedies may include but are not limited to:

- removal and disposal of highly impacted material
- on-site treatment of highly impacted material
- groundwater pumping and treating
- soil vapor extraction
- biodegradation (enhanced or natural)
- monitoring

.05(9) REMEDIATION PRIORITY RANKING

Sites will be ranked for remediation within each of the following groups:

Immediate Remedial Action Needed
Remedial Action Pending
Monitoring Only
No Remedial Action Required

Remedial actions will be approved at sites in accordance with the priority ranking schedule.

.05(10) IMPLEMENTATION OF REMEDIATION

Following approval by the Department of a work plan, cost proposal, and schedule for implementing the selected remedial option, remediation activities will be conducted. The PEP will submit to the Department a remediation report summarizing the activities undertaken, sample results, and any other information requested by the Department on the start-up remediation phase.

The Department will provide direction concerning the specific format that the initial remediation report and subsequent reports are to follow. The type and complexity of remedial option(s) selected will have a bearing on report formats. For remedial options that require long term operation and maintenance (O & M) and/or monitoring, periodic O & M and/or monitoring reports will be submitted to the Department.

These reports are to provide sufficient data to confirm that the selected remedial option is performing as expected, approved remediation activities have been conducted, and site remediation goals are being achieved. Any technical malfunctions, system down time, lost samples, or other problems encountered in this phase of work are to be documented. The date(s) of problem discovery and date(s) of subsequent response actions are also to be documented and described in the reports that are submitted to the Department.

.06 WITHDRAWING AN APPLICANT'S GRANT OF APPROVAL

Even though a favorable determination has been made by the Department concerning an application for entry into the program, such favorable determination may be withdrawn by the issuance of a Commissioner's Order. Although there is no opportunity to cure the withdrawal of a favorable determination, the applicant can appeal the order to the Drycleaner Board for the Board's review of the decision.

Willful Noncompliance

The Rule specifies that the withdrawal of an applicant's grant of approval must be based on a determination that the applicant is in willful noncompliance with the provisions of the Act or the Rule. The Rule defines willful noncompliance as including, but not limited to:

- (a) an applicant's material misrepresentation of facts in its registration application or its petition for entry into the program; or
- (b) an applicant's failure to timely adopt, install or maintain an applicable BMP where such action or omission significantly causes or contributes to a release or a failure to contain a release.

Order Withdrawing Grant of Approval

A Commissioner's Order will be issued to any applicant whose approval for entry into the program has been withdrawn. The order will either be delivered by personal service or it will be sent by certified mail, return receipt requested.

All orders will contain a statement of the facts constituting the alleged violations. In addition, any order may also provide for the following:

- (1) immediate suspension of reimbursement payments from the Fund; or
- (2) return of any Fund payments received by a person who was ineligible at the time of receipt of those payments.

Appeal of Order

An applicant whose favorable determination has been withdrawn may appeal by filing a written petition pursuant to Rule .10. Pending such appeal, any suspension of Fund payments by the Department will remain in effect.

Following the hearing of a contested petition, the Board will determine whether the applicant should be eligible for Fund reimbursement of some or all of its expenses. If the Board determines that only a portion of the expenses are reimbursable, the applicant will be liable for all other expenses associated with the release and shall not otherwise be eligible for program benefits.

Notice to Impacted Third Parties

Notice of Orders:

Impacted third parties who are known to the Department will be sent written notice of the applicant's withdrawal of approval. These third parties include:

- (1) any lessor of real property on which an active or abandoned drycleaning facility or in-state wholesale distribution facility is located; and
- (2) any owner or lessee of real property on which there is known or suspected contamination resulting from the release of solvents at the site in question

Notice of Appeal:

An applicant who appeals the Department's decision withdrawing a grant of approval must provide a copy of the appeal to known impacted third parties at the time the appeal is filed. In addition, the applicant must provide the third party with reasonable notice of the date set for the hearing of the petition.

If the applicant and the Department agree to hear the contested petition at a different time than the time communicated to known third parties, then the applicant must notify the third parties of the changed date at least five business days before the *original* hearing date.

Other Eligible Parties

Even if the original applicant for a site becomes ineligible to receive fund reimbursement as a result of conduct occurring after the Department has granted an application for entry into the program, the site itself is not necessarily barred from receiving funds. Another PEP may apply to receive reimbursement so long as all site requirements have been met.

Even if the new PEP receives a favorable determination from the Department concerning eligibility, such favorable determination may be withdrawn by the Department through the issuance of an Order if the new PEP has done any of the following:

- (1) *contributed to or cooperated in a material misrepresentation in another eligible party's petition within its knowledge;*
- (2) *failed to timely inform the Department or Board of a material misrepresentation in another eligible party's petition within its knowledge; or*
- (3) *acquiesced in the failure to timely inform the Department or Board of a material misrepresentation in another eligible party's petition within its knowledge.*

.07 CLEANUP GOALS/CLEANUP ACTIONS

This section provides information concerning the concepts of cleanup (remediation) goals and cleanup action levels as they have been developed for use in the DCERP.

Cleanup Actions

Cleanup actions refer to remediation activities. The Department will review and approve a selected remedial option and the specific remediation activities that are associated with that option as part of the Remedial Alternatives Study (RAS) phase of work described in Section .05 of this Guidance Document. A cleanup action may include any of the presumptive remedies listed in Section .05 or may include alternative remedies approved by the Department.

Cleanup Action Levels and Cleanup (Remediation) Goals

The concept of cleanup action levels refers to non site-specific, widely applicable numerical standards developed for either or both soil or groundwater contamination. Cleanup action levels are stringent standards designed to be maximally protective of human health and the environment.

In the context of this program, the drinking water standards established by the U.S. EPA for tetrachloroethylene and its associated chemical breakdown products are examples of cleanup action levels. Remediation experience has shown that in many site settings it is neither cost effective nor technically feasible to achieve such Action Levels.

The concept of cleanup (remediation) goals refers to maximum allowable contaminant concentrations which have been developed on a site-specific basis, based on a determination of risk. In the DCERP the development of remediation goals on a site-specific basis is expected to be an integral part of determining an appropriate remedial strategy at each DCERP site.

The Department will provide more specific information concerning the required steps which are to be followed in order for an Eligible Party to justify and request site-specific remediation goals which are reasonable, appropriate, and protective of human health and the environment.

Factors which will be important in the development of remediation goals include but are not limited to:

- the nature and level of contaminants present;
- the geologic and hydrologic setting and potential for contaminant migration;
- the nature and location of sensitive receptors, including current and potential drinking water sources;
- the potential for direct human contact with impacted soil or other material and the relative risks associated with various routes of exposure;
- the current and potential future uses of the property and surrounding properties;
- the technical feasibility of reducing contaminant levels to any significant degree.

.08 ADMINISTRATIVE GUIDELINES FOR THE TENNESSEE DCERP

DCERP Fund Obligations

As stated in Rule 1200-1-17.08(1), available monies in the DCERP Fund will be obligated for environmental response activities based on the priority ranking system and statutory limitations. In accordance with TCA 68-217-107 (b), the Drycleaner Board may not authorize the use of DCERP funds in excess of \$200,000 per year for any individual facility.¹ For facilities (sites) which have equivalent ranking status, funds will be obligated according to the chronological order in which a complete Application for Entry into the DCERP was received.

Clean-Up Before the Designation of Fund Monies

Funds in the DCERP will be committed to eligible sites based on the site's ranking status in the program. For a site whose ranking (priority) position has not triggered notification by DCERP to proceed to the next work plan phase, there is a provision in the Rule to allow for additional work to go forward, with DCERP funding to follow at a later date. This process is an exception to the normal DCERP process and as such, it has many contingencies including if and when the Eligible Party will be reimbursed by the Fund. A party wishing to invoke this provision in the Rule is cautioned to carefully consider the risks and benefits associated with this process before making any decisions or expending any money.

The process works as follows: After submitting its Prioritization Ranking form, an Eligible Party will receive written notification from the DCERP regarding its priority for further fund-reimbursable work. If the DCERP notifies the Eligible Party that DCERP funds have not yet been designated to address further work at the subject site, the Eligible Party can choose either: (1) to wait for further notification from DCERP to proceed or (2) to proceed under the Clean-Up Before the Designation of Fund Monies (CUBDFM) process.

If the Eligible Party chooses to continue with CUBDFM, that party will contract with an approved contractor and submit a work plan and cost proposal for the additional work. Following DCERP written approval of the work plan and cost proposal, the Eligible Party would then be able to perform the pre-approved activities.

The DCERP written approval is contingent on many factors which may affect if, when, and how much the Eligible Party will be reimbursed. The conditions related to DCERP pre-approval of work plans will be clearly stated in the approval letter issued to the Eligible Party. These contingencies are as follows:

- A site's ranking in the priority ranking system determines when Fund monies will become available for that site. The Department will re-prioritize sites at least annually. As a result, a site's ranking may change either up or down on the priority ranking system following the initial site ranking determination.
- DCERP written approval will be contingent upon performance of the pre-approved work in a timely manner, e.g., within (12) months from the date of the approval. If the pre-approved work is not conducted within this time frame, the Eligible Party is to notify the DCERP of this fact. In cases where pre-approved work has not been conducted within the specified time frame, the DCERP may require the Eligible Party to submit an amended work scope and cost proposal for approval.

- The DCERP may also completely withdraw the original written approval at the expiration of the specified time frame period if no work has been performed. The DCERP may also review the status of completed work at the end of the time frame, and where appropriate, request amendments to the uncompleted portion of the work plan.

This approval contingency will allow the DCERP the necessary flexibility to ensure that technological improvements, cost reductions, or other factors are taken into account when Funds are being committed for approved work.

- If the DCERP determines that the subject facility has not met DCERP Fund eligibility requirements during all or part of the time interval between pre-approval of the work plan and the date that the activities were performed, then the pre-approved costs will not be eligible for reimbursement. Reimbursement is contingent upon a facility's maintaining compliance with fund-eligibility requirements, which includes payment of all applicable fees and surcharges. Opportunity to Cure provisions as set forth in Rule Section .05 would apply in such situations.

Scope of Fund Coverage

All costs consistent with cost proposals approved by the Department shall be considered "reasonable costs". Reasonable cost expenses will be reimbursed to an Eligible Party, less applicable deductibles. No interest payments will be applied to (added) an approved cost proposal in determining a reimbursement payment amount.

The following deductible amounts are set forth in both the Act and the Rule:

Facility Category	% to be Deducted From Each Reimbursement	Maximum Deductible Amount to be Applied
Drycleaning facility, 0-4 FTEs	5%	\$ 5,000 per site, per clean-up
Drycleaning facility, 5-10 FTEs	10%	\$10,000 per site, per clean-up
Drycleaning facility, 11 or more FTEs	15%	\$15,000 per site, per clean-up
In-state wholesale distribution facility	25%	\$25,000 per site, per clean-up
Abandoned drycleaning facility	25%	\$25,000 per site, per clean-up

-An impacted third party's deductible is the same as the facility for which Fund coverage is sought.
 -Facilities that come into the program as active and then subsequently become abandoned pay the deductible for an active facility

1 In accordance with the Act, the \$200,000 per site/per year maximum Fund reimbursement shall apply "except in the sole discretion of the Board upon request by any party including the Department."

Authorized Fund Disbursements

The DCERP Fund shall be available for reasonable costs associated with such activities as inspection, investigation, assessment, cleanup, and/or monitoring of sites contaminated by a release of drycleaning solvent(s). Other DCERP-approved activities related to minimizing environmental damage and/or providing adequate protection of public health are fund-eligible. This includes provision of a temporary replacement of and/or permanent restoration of drinking water supplies that have been impacted by a release of drycleaning solvent(s).

The costs for reasonable initial abatement and site stabilization activities are Fund eligible, up to \$5,000 and subject to the applicable deductibles, without submission and prior Department approval of a cost proposal. A Potentially Eligible Party should however, contact the DCERP as soon as possible concerning such expenditures for Fund tracking purposes.

The cost of conducting an initial Facility Inspection is eligible for reimbursement, regardless of whether the Inspection determines that the facility is eligible or ineligible for reimbursement of further costs. Subsequent Facility Inspection(s) that may be required by the Department as a follow-up to "curing" fund-ineligible conditions are not reimbursable.

Fund Ineligible Costs

Fund monies shall not be used to reimburse costs incurred by owners or operators of facilities in conducting repairs, retro-fits, or the implementation of best management practices.

Rule 1200-1-17-.08(4)(f) states: "The Fund shall not be obligated or pay out any funds for any non-response type of damages, losses, costs, or expenses of any kind, including but not limited to ...the restoration or repair (other than response actions) of any real and personal property for any reasons.... In addition the Fund shall not be used for the landscaping of sites but shall only be used to restore those portions of the site affected by Fund approved activities to a safe condition."

"Non-response" type of damages or costs includes but is not limited to: (1) losses related to a decline in property value(s) related to a drycleaning solvent release, (2) damage to property resulting from a release, and (3) personal injury or death related to a drycleaning solvent release. The Fund shall also not be used to pay any penalties, fines, or other punitive expenses incurred for any reason.

The DCERP will ensure that those portions of sites affected by Fund approved activities will be restored to a safe condition. The DCERP is not obligated to provide Fund monies for property restoration work that is not directly related to establishing safe site conditions.

See the Reasonable Rate Schedule in this Guidance Document for more information on eligible and ineligible costs.

The DCERP Fund Cannot be Applied Retroactively

The Fund shall not be used to reimburse for any expenses incurred prior to the effective date of Rule 1200-1-17.

Changes to an Approved Cost Proposal

The cost of completing any task in an approved work plan that exceeds the amount in the approved cost proposal may be denied by the Department unless either an amended written cost proposal is submitted prior to the exceedance, or oral approval is given by the Department for the requested change. Should oral approval be given, a written amended cost proposal is to be submitted to the Department within (2) working days of the oral approval date.

Maintaining Fund Eligibility

In order to maintain Fund eligibility the owner or operator of a facility shall remain in material compliance with the Act and program regulations, including best management practices. All required fees and surcharges must also be paid.

Certain records are to be maintained and made available to the Department upon request. These records include solvent purchase or transfer records, employee payroll records, waste disposal manifests, and documentation of Fund-eligible site expenses. Unless the Department instructs otherwise, these records shall be retained for (3) years after a certificate of completion has been issued by DCERP.

Also, the DCAC shall maintain invoices and other financial records associated with costs for which reimbursement will be requested for at least (3) years after the response action has been completed for a site.

After being accepted into the DCERP an Eligible Party is to report to the DCERP any solvent releases which may impact the investigation or remediation of the site.

Applications for Reimbursement

Please see the Reimbursement Application form included in this Guidance Document for a description of information to be supplied by the Applicant. The Applicant and the Applicant's DCAC(s) are required to sign the certification statement portion of this form.

Invoices are to be clearly marked whether they have been paid by the Applicant or are unpaid as of the date of the reimbursement application. If work performed by the DCAC has not been paid by the Applicant the DCERP will issue a joint check payable to both the PEP and the DCAC(s) who performed the work, less the applicable deductible.

The importance of maintaining and providing proper documentation of actual, incurred costs cannot be overemphasized. The costs approved by the DCERP for the Facility Inspection phase of work (only) may be billed on a lump-sum cost basis if desired by the DCAC. Acceptance of a work plan and cost proposal by the DCERP means that the projected costs are reimbursable up to the pre-approved amount. If actual project costs fall below the pre-approved amount, only the amount of the actual costs are subject to be reimbursed.

Invoices for work conducted under an approved work plan and cost proposal shall to the greatest extent possible contain the same information and cost breakdown as was included in the original approved work plan and cost proposal. At minimum, invoices shall briefly describe the nature of the invoiced work, identify work dates, personnel names, job titles and hourly rates, unit costs, and clearly identify all cost categories.

Applications for Reimbursement (continued)

Description of the nature of the invoiced work may include identification of the phase of work.

Work dates identified must fall between the date of the Notice to Proceed and date of the Report.

Names of personnel included on the Request for Reimbursement must be included in the contractors DCAC Application. For personnel whose resume is not a part of the DCAC Application, submit a current resume according to the requirements of the DCAC Application. Job Titles and hourly rates must be included for each individual and must be in accordance with job titles and rates described in this guidance document.

Cost categories must reflect the approved work plan and cost proposal.

Separate cost entries are to be made for labor (with fieldwork identified separately from office work), materials, analytical fees, consumable supplies, rental equipment, travel time, per diem charges, subcontracted work, etc. If subcontractor costs are included in the application, a legible invoice copy and documentation of payment made to the subcontractor shall be included with the reimbursement application.

The applicant facility must provide the facility Tax Identification Number in order to be reimbursed. If the applicant is an individual rather than a facility, then the individual must provide their Social Security Number.

Reimbursement applications must be received within (1) year from the date of performance of the reimbursable work. Acceptance of reimbursement constitutes an assignment by the party with respect to any insurance coverage applicable to the costs that are reimbursed.

Verification of Completed Work

Should a site inspection or other information reveal a discrepancy between work performed and the work addressed by a reimbursement application, the Department may deny payment or may require the Fund to be reimbursed for money already disbursed.

.09 CONTRACTORS

General

A Drycleaner Approved Contractor (DCAC) is a person or company responsible for conducting and overseeing the inspection, investigation, remediation oversight, or remediation of a drycleaner environmental response program (DCERP) site.

Contractors may be approved to perform fund eligible work at drycleaning facilities, abandoned drycleaning facilities, or wholesale solvent distribution facilities. This list of DCACs is updated quarterly.

Contractor Obligations

In addition to the program regulations, contractors shall abide by all the requirements set forth in the certification statements which appear in the last sections of the Drycleaner Approved Contractor (DCAC) Application form and the DCERP Reimbursement Application form. Modifications were made to these forms in early 1998; they are included in the Forms section of this Guidance Document. Applicants should review both of these forms as well as Section .09 of the Rule (Appendix B) prior to submitting their DCAC application.

Contractor Categories

Four contractor categories have been established by the DCERP to perform the following fund eligible types of work: facility inspections, investigative work, remediation oversight, and remediation. Contractors approved in the facility inspection category shall perform Facility Inspections only. Contractors approved in the investigative category are approved to perform Prioritization Investigations, Solvent Impact Assessments, and Remedial Alternative Studies.

Contractors approved in the remediation oversight category are approved to prepare remedial designs and studies, conduct oversight of remedial activities, and perform periodic system evaluations, sampling, and operations and maintenance tasks. Contractors approved in the remediation category are approved to perform remediation construction work only and shall hold a Tennessee Contractor's License with a Specialty/Environmental Classification D (Hazardous Waste Removal) or E (Air, Water, or Soil Remediation). DCACs may be approved to perform work in one or more than one category.

Application and Fees

A company will be approved to perform fund eligible work once the company has submitted a satisfactory written application to the Department for review and has submitted the application fee for the category or categories applied for. The application will include completion of the Drycleaner Approved Contractor (DCAC) Application form and submittal of a statement of qualifications and experience as specified in Rule 1200-1-17-.09(2). The non-refundable registration fee is five hundred dollars (\$500) if applying for registration in one DCAC category or seven hundred fifty dollars (\$750) if applying for more than one DCAC category. The fee payment must accompany the application.

A company whose application is not approved as a DCAC may appeal the Department's determination to the Drycleaner Environmental Response Board within thirty (30) days of notification.

Renewal of DCAC Application

Prior to April 1 of each year each DCAC wishing to maintain their status as an approved contractor must submit a renewal application to the Department. A non-refundable renewal fee of two hundred dollars (\$200) for one category and three hundred fifty dollars (\$350) for more than one (1) category must accompany the renewal application.

An update of information as required in Rule 1200-1-17-.09(2)(d) must be submitted with the application. The update is to include information concerning DCAC personnel changes, confirmation that the required insurance coverage's and professional licenses are in place, etc.. In order for a DCAC to remain on the list of contractors approved to perform fund eligible work under the DCERP the DCAC must continue to be in compliance with the rules as required in Rule 1200-1-17-.09(3).

Removal from the Approved Contractor List

A DCAC may be removed from the approved contractor list if the DCAC, its principals, officers, or employees fails to comply with the rules as established in Rule 1200-1-17-.09(5). The process for removal from the approved contractor list is initiated when a complaint is received by the Department or when the Department determines that a DCAC's activities should be evaluated. The removal process is described in Rule 1200-1-17-.09(6). If a DCAC is removed from the list 3 times, then the DCAC will not be eligible to reapply to the DCERP.

.10 ENFORCEMENT

Commissioner's Orders

The Drycleaner Board has delegated authority to the Commissioner to issue administrative orders to enforce certain provisions of the program. These provisions include:

- (1) payment of appropriate fees, surcharges, and penalties authorized under the Act;
- (2) revocation or withholding re-issuance of a facility's Certificate of Registration subject to Rule .03(5)(a); and
- (3) withdrawal of any favorable determination concerning an application for entry into the program subject to Rule .06.

In addition, the Commissioner has statutory authority under T.C.A. § 68-217-106(d) to issue orders against wholesale suppliers who sell solvent to unregistered drycleaning facilities.

Manner of Service and Content of Orders

Every Commissioner's Order will state, as appropriate, the grounds for the order, the Order's effective date, and how the subject facility can comply with the order in order to avoid further enforcement action. With revocation of a Certificate of Registration, such compliance will include surrender of the certificate to the Department.

Commissioner's Orders will either be delivered by personal service to the subject facility or they will be sent by certified mail, return receipt requested.

Appeal of Order

Any person against whom an order is issued may appeal the order to the Drycleaner Board. The Board may review the reasonableness, propriety, or amount of the order. The hearing before the Board will be in accordance with the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101 *et seq.* If the person appealing is unable to afford legal representation, free or low-cost legal assistance may be available. Local bar associations can assist with these questions.

In order to appeal, the person against whom an order is issued must file with the Commissioner a written petition asking for a hearing. This written petition must set forth the grounds and reasons for the objection to the Order and must be filed within thirty (30) days after issuance of the order. If the order is delivered by certified mail, an additional three (3) days will be permitted for filing the written petition.

These appeal rights will be contained in a notice of rights section at the end of every Commissioner's Order. The notice will address to whose attention an appeal should be sent and the proper address and telephone number for that person.

REASONABLE RATE SCHEDULE

Maximum Allowable Professional Service Costs

Maximum allowable professional service fees have been established for DCERP-funded work. Work plans and cost proposals submitted for DCERP approval shall not exceed this schedule. The maximum allowable fee schedule is shown in a table included later in this section.

Costs Other Than Labor Costs

Vehicle Mileage: Current (July 1999) maximum allowable rate: \$ 0.28/per mile

Travel Expenses: Travel expenses for conducting fund eligible work will be reimbursed at the rates established by the Department of Finance and Administration Comprehensive Travel Regulations. A current travel rate table is included as Appendix A of this document. The rates that are in effect at the time the work is accomplished will be the reimbursable rate.

Other work plan cost components will be reviewed by DCERP on a project-specific basis as part of the work plan, cost proposal pre-approval process. This includes costs associated with well drilling and completion, rental equipment usage, laboratory charges, consumable supplies, etc. Cost proposals submitted for approval by the DCERP shall contain detailed, itemized breakdowns of expenses by category, showing unit cost and total-cost calculations. A miscellaneous cost category can be included for low-cost project items provided that there is an explanation for what types of costs are included under this heading.

Equipment Usage Charges: If equipment usage charges for field analytical equipment (pH meters, specific conductance meters, turbidity meters, temperature meters, organic vapor analyzers) are to be reimbursed at a DCERP-funded project, it will be necessary to provide documentation that the equipment has been properly calibrated and inspected to ensure that it is in good working order, and that an equipment check has been done on a daily basis for each day of usage. Copies of field notes and equipment logbooks can be used to meet this requirement. In the case of organic vapor analyzers it is also necessary to provide documentation that the equipment has been factory-calibrated and inspected prior to and within six months of any date of DCERP-reimbursed project usage.

MAXIMUM ALLOWABLE COSTS - FOR SPECIFIC PHASES OF WORK

Maximum allowable costs have been established for active drycleaning facilities for the Facility Inspection (FI) and Task Group A of the Prioritization Investigation (PI).

For abandoned drycleaning facilities and wholesale distribution facilities, no maximum allowable costs have been established due to the varying costs that may be associated with inspection and/or investigation of these facilities. However, the DCERP does assume that in many cases work done at these facilities should be accomplished within the cap(s) set for active facilities.

There are no maximum allowable costs associated with work phases beyond the PI stage, including the Solvent Impact Assessment or Remedial Alternatives Study phases. Acceptable costs for these work phases will be reviewed and approved on a case-by-case basis.

Facility Inspection

The Facility Inspection is the first phase of work that will be conducted in this program. Unlike other work phases, the Facility Inspection tasks are expected to be uniform from site-to-site and the overall scope of work is limited.

FACILITY INSPECTION - ALLOWABLE COSTS ¹		
Facility Category	Size	Maximum Charges
Active Drycleaning Facility	0 - 4 FTEs	\$ 1,000
Active Drycleaning Facility	5 - 10 FTEs	\$ 1,100
Active Drycleaning Facility	11 or more FTEs	\$ 1,200
Abandoned Drycleaning Facility	Site-specific	Site-specific
Wholesale Distribution Facility	Site-specific	Site-specific
For all Facility Inspections:		
Costs Other Than Labor Costs:	Vehicle Mileage charges only	
Expected Overnight Travel Costs:	None	
Expected Equipment Costs:	None	

¹ If an expanded (more costly) scope of work for a Facility Inspection or Task Group A of a Prioritization Investigation is deemed necessary for a particular facility or site, a PEP may submit a cost proposal and work plan reflecting the increased scope of work and subsequent increased cost. The submittal shall also include an explanation as to why the additional work is appropriate **at this stage of DCERP-funded investigation** at the subject facility.

FTEs: Full Time Equivalent Employees

Prioritization Investigation

The Prioritization Investigation will be conducted in two task groups, Task Group A and Task Group B, as described in section .05 of this document.

Task Group A includes those labor and other costs associated with preparation of a work plan, site reconnaissance, drafting of maps, records researches, and preparation of the Task Group A portion of the Prioritization Investigation Report and the Prioritization Ranking Form. The DCERP expects that all relevant data, records or other information obtained during the Facility Inspection work phase will be utilized (and not “re-researched”) during the PI phase of work.

Task Group B includes costs associated with conducting and reporting the media sampling activities of the Prioritization Investigation. Task Group B includes, but is not limited to, costs associated with rental equipment, sampling materials, sample collection, sample shipping, personnel travel costs, laboratory analytical costs, and other subcontractor costs related to this task group. Reasonable costs associated with data interpretation and preparation of the Task Group B portion of the Prioritization Investigation Report may be included.

PRIORITIZATION INVESTIGATION - ALLOWABLE COSTS ¹

Facility Category	Size	Task Group A	Task Group B
Active Drycleaning Facility	0 - 4 FTEs	\$ 3,000	Site-specific
Active Drycleaning Facility	5 - 10 FTEs	\$ 3,000	Site-specific
Active Drycleaning Facility	11 or more FTEs	\$ 3,000	Site-specific
Abandoned Drycleaning Facility		Site-specific	Site-specific
Wholesale Distribution Facility		Site-specific	Site-specific

¹ If an expanded (more costly) scope of work for a Facility Inspection or Task Group A of a Prioritization Investigation is deemed necessary for a particular facility or site, a PEP may submit a cost proposal and work plan reflecting the increased scope of work and subsequent increased cost. The submittal shall also include an explanation as to why the additional work is appropriate **at this stage of DCERP-funded investigation** at the subject facility.

FUND INELIGIBLE COSTS

Refer to Rule 1200-1-17-.08(4) and section .08 of this document for a discussion of fund ineligible costs.

Fund ineligible costs specifically include:

- general business operations costs (examples: usage of photocopier, fax machine, computer, cost of computer software, office and drafting supplies, basic personnel protective equipment, fieldbooks, calibration gas, etc.);
- reference books and materials;
- USGS maps, state and local maps, and any similar materials unless of a unique nature obtained specifically for a project;
- overtime charges;
- costs related to duplicating work that are a result of preventable errors or omissions, lack of proper care of equipment, etc.;
- preparation of Application for Entry into the DCERP form, Facility Registration forms;
- any cost which is not specifically related to conducting DCERP-funded project work;
- excessive mileage or travel costs.
- markups (including subcontractor charges, lab charges, equipment rental, supplies, permit fees, etc.

**MAXIMUM ALLOWABLE RATES - PROFESSIONAL STAFF
for the
DRYCLEANER ENVIRONMENTAL RESPONSE PROGRAM**

Definitions for the staff classifications listed below are given on the pages following this table.

Professional Staff Classification	Maximum Hourly Billing Rate
Principal-In-Charge	\$ 90
Project Manager	\$ 80
Senior Engineer	\$ 75
Staff Engineer/Engineer Intern	\$ 60
Senior Environmental Scientist	\$ 75
Environmental Scientist	\$ 60
Staff Environmental Scientist (entry level)	\$ 50
Senior Geologist	\$ 75
Geologist	\$ 60
Senior Technician	\$ 45
Technician	\$ 30
Draftsperson	\$ 40
Administrator	\$ 35
Secretary	\$ 30

STAFF DESCRIPTIONS

TO ACCOMPANY THE DCERP REASONABLE RATE SCHEDULE

Job titles and classifications are to be shown on work plans, cost proposals and reimbursement applications submitted to the Department. Reports submitted in the DCERP program will also require that persons with either a State of Tennessee Professional Geologist or Professional Engineer license review and sign the report and certify that the described work was done in accordance with the approved work plan etc.

Staff Flexibility

Some staff flexibility in the performance and billing of project work is acceptable. For example, there may be some instances where one person may perform different skill levels of work on a given project. Any qualified professional who performs a task of a lessor qualified position should bill at the rate of that job task. For example, if a Staff Environmental Scientist performs groundwater sampling or other field work routinely handled by a Technician, the sampling task should be billed at the Technician billing rate.

Alternately, qualified professionals normally billing at a different rate than that of Project Manager may act as Project Manager on specific projects or during specific project phases. The work performed as the Project Manager is to be billed at the Project Manager rate. Pre-approval of work plans and cost proposals is designed to allow for the Department's review of such situations on a case-by-case basis.

These staff descriptions are presented as guidelines for a reasonable rate schedule and billing purposes. Nothing in this guidance is to be interpreted to mean that each of these disciplines must be employed by a DCAC or that all must be used on any given project.

Principal-In-Charge: The principal-in-charge must be responsible for the oversight of all staff in a contractor's regional office, including assignment of staff to specific projects and overview of all project managers and senior level staff. The principal-in-charge must have a BS or MS degree in geology, engineering, or other related appropriate science and seven (7) years experience as supervisor of technical staff. It is not expected that a Principal-In-Charge will be frequently involved with project oversight; involvement may occur on more complex sites.

Project Manager: The project manager must have five (5) years full-time experience in investigation, remedial planning, or design phases of environmental project management. For remediation phases of work, experience in remedial action and general construction is required. A BS degree in engineering, geology, or other appropriate science is necessary. The project manager must have supervisory and project management experience. The project manager must be able to prepare work plans and cost estimates and determine project schedules. Where circumstances dictate, the project manager must have the authority to make field decisions.

Senior Engineer: The senior engineer must be a Professional Engineer licensed in the State of Tennessee and must have five (5) years full-time experience in environmental audit, investigation, remediation, or design phases of appropriate environmental projects. The senior engineer must be able to perform process design calculations. The senior engineer will contribute to the, Solvent Impact Assessment, Remedial Alternatives Study, and remedial design stages of a project, as well as technical and report review.

Staff Engineer/Engineer Intern: The engineer must be an Engineer Intern, Engineer-in-Training, or a Professional Engineer in the State of Tennessee. It is preferred these individuals have at least three (3) years directly related experience in investigation and remediation. The staff engineer must be able to oversee all field related activities at drycleaning sites. Must have working knowledge of soil and groundwater sampling techniques, drilling techniques, monitoring well installation, health and safety issues, and QA/QC protocols.

Senior Environmental Scientist: The senior environmental scientist must have BS degree in the fields of biology, chemistry, environmental science, soil science, or related field of science acceptable to the Department. An advanced degree is preferred. The senior environmental scientist must have five (5) years full-time experience in environmental audit, investigation, remediation or design phases of appropriate environmental projects. The senior environmental scientist will contribute to the Solvent Impact Assessment, Remedial Alternatives Study, and remedial design stages of a project, as well as technical and report review.

Environmental Scientist: The environmental scientist must have a BS degree in the fields of biology, chemistry, environmental science, soil science, or related field of science acceptable to the Department. The environmental scientist must have three (3) years experience in environmental investigation and remediation and have working knowledge of soil and groundwater sampling techniques, drilling techniques, monitoring well installation, health and safety issues, and QA/QC protocols.

Staff Environmental Scientist: The staff environmental scientist must have a BS degree in the fields of engineering, geology, biology, chemistry, environmental science, soil science, or related field of science acceptable to the Department. The staff environmental scientist must have general knowledge of soil and groundwater sampling techniques, drilling techniques, monitoring well installation, health and safety issues, and QA/QC protocols.

Senior Geologist: The senior geologist must have a BS or MS degree in geology and must be a Professional Geologist in the State of Tennessee and have at least five (5) years full-time experience in environmental audit, investigation, remediation or design phases of appropriate environmental projects. An advanced degree is preferred. Must be experienced in overseeing drilling operations, monitoring well installation, aquifer testing, and data collection and interpretation. The senior geologist will contribute to the Solvent Impact Assessment, Remedial Alternatives Study, and remedial design stages of a project, as well as technical and report review.

Geologist: The geologist must have a BS degree in geology. The geologist must have three (3) years experience in investigation and remediation at sites where soil and groundwater contamination from hazardous substances has occurred. The geologist must be able to oversee all field related activities at drycleaning sites. Must have a working knowledge of the geology of the geologic provinces of Tennessee and the effects of these differing conditions on contaminant movement. Must have working knowledge of soil and groundwater sampling techniques, drilling techniques, monitoring well installation, health and safety issues, and QA/QC protocols.

Senior Technician: Senior technicians must have three (3) years experience in a technician role in the environmental field with job duties of increasing complexity beyond sampling. Senior technicians must have completed HAZWOPER health and safety training and be familiar with soil and groundwater sampling techniques, health and safety issues, QA/QC protocols, and typical remediation techniques and equipment. Duties of Senior Technicians are expected to include measurement of well elevations, remediation equipment inspection and troubleshooting, participation in pilot testing, and oversight of other staff in safety procedures, sampling, decontamination, and other field activities.

Technician: Technicians must have completed HAZWOPER health and safety training and be familiar with soil and groundwater sampling techniques, health and safety issues, and QA/QC protocols. Technicians will assist senior technicians in field sampling, measurements and record keeping, and remediation operation and maintenance activities.

Draftsperson: Must have the ability to develop scaled maps, engineering drawings and contour maps of professional quality. A draftsman must have two years full time experience relating to drafting and cartography or an associates degree with emphasis on drafting or CAD operation.

Administrator: Performs more complex administrative tasks which may include but are not limited to utilizing spreadsheets to track tasks, budgets, and schedules, preparing and organizing all documentation for reimbursement applications, assisting in the preparation of detailed cost proposals, and organizing and providing QA/QC on lengthy reports.

Secretary: (Clerical support, word processing, and other office workers are included in this category). Must be able to type, use word processor, and carry out general clerical duties. It is expected that the majority of document production will be performed by this billing category.